

REMARKS/DISCUSSION OF ISSUES

Claims 2-10 and 16-26 are pending in the application.

Applicant notes that claims 4-5, 16-18 and 20-26 have been indicated to define patentable subject matter and would be allowable if rewritten in independent form including all features of their respective base claims and any intervening claims.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

35 U.S.C. § 103

The Office Action rejects claims 1-3, 6-10 and 19 under 35 U.S.C. § 102 over Nagano U.S. Patent 5,570,339 ("Nagano") in view of Sauer et al. U.S. Patent 5,574,407 ("Sauer")¹.

Applicant respectfully traverses those rejections for at least the following reasons.

Claim 2

At the outset, the Office Action includes no description of the rejection of claim 2. Nevertheless, Applicant respectfully submits that claim 2 is clearly patentable over Nagano and Sauer for at least the following reasons.

Among other things, the method of claim 1 includes inserting local phase errors in the bitstream of a primary signal to distort the bitstream of the primary signal.

The Office Action fairly admits that Nagano fails to disclose or suggest such a feature.

However, the Office Action states that: (1) Sauer discloses this feature in the Abstract and at col. 1, lines 43-67; and (2) it would have been obvious to one of

¹ Claim 1 is canceled. The Office Action Summary, and Item 1 on page 2 of the Office Action, both acknowledge that the pending claims are claims 2-10 and 16-26. However, the Office Action Summary and Item 4 on page 2 of the Office Action state that claim 1 is rejected. The Office Action also gives a detailed explanation for the rejection of claim 1 on pages 2 and 3 of the Office Action. This is quite confusing. Again, claim 1 is canceled. Clarification is requested.

ordinary skill in the art at the time the invention was made to have modified Nagano's method to include this feature "*to improve the technique of embedding.*"

Applicant respectfully disagrees with both of these statements, and respectfully traverses the proposed combination of Nagano and Sauer for at least the following reasons.

A rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See M.P.E.P. § 2142 (quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) and KSR 82 USPQ2d at 1396 (2007) (quoting Federal Circuit statement with approval)).

Applicant respectfully submits that the present rejection is not based on an articulated reasoning with any rational underpinnings, but instead is based on an incorrect characterization of the teachings of Sauer, combined with conclusory statements.

At the outset, Sauer is directed to a so-called line-locked generator for video signal processing. Sauer discloses a phase locked loop (PLL) for locking a video clock to a horizontal line rate of a received video signal. It is well known that PLLs can have a range of phase ambiguity or inconsistency. Sauer discloses an arrangement which open-loops or "idles" the PLL when the difference between the measured phase errors for a pair of horizontal line periods is greater than a predetermined threshold which indicates that the PLL is operating in the area of phase ambiguity or inconsistency.

Applicant respectfully submits that Sauer does not disclose or remotely suggest inserting any local phase errors in the bitstream of a primary signal to distort the bitstream of the primary signal. Sauer most certainly does not disclose or suggest any such thing in the Abstract or in col. 1, lines 43-67.

Again, the Office Action admits that Nagano does not disclose these features.

So no combination of Nagano and Sauer could ever produce the method of claim 1 that includes these features.

Furthermore, the Office Action does not provide any evidence in support of the conclusory statement that one of ordinary skill in the art at the time of the invention would have “*modified the invention of Nagano with the teaching of Sauer to improve the technique of embedding.*” Indeed, the Office Action does not even provide any evidence that such a modification actually would “*improve the technique of embedding*” – or that this would have been recognized by one of ordinary skill in the art at the time the invention was made.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 2 is clearly patentable over Nagano and Sauer.

Claims 3, 6, 7 and 19

Claims 3, 6, 7 and 19 all depend from claim 2 and are deemed patentable for at least the reasons set forth above with respect to claim 2.

Claim 8

Among other things, the apparatus of claim 8 includes distortion means for distorting the bitstream of a primary signal such that a secondary signal is represented by a predetermined distortion, wherein the distortion means includes means for inserting local phase errors in the bitstream of the primary signal.

For similar reasons to those set forth above with respect to claim 2, Applicant respectfully submits that Sauer does not disclose or remotely suggest any means for inserting local phase errors in the bitstream of a primary signal to distort the bitstream of the primary signal. Sauer most certainly does not disclose or suggest any such thing in the Abstract or in col. 1, lines 43-67.

Again, the Office Action admits that Nagano does not disclose these features.

So no combination of Nagano and Sauer could ever produce the apparatus of claim 8 that includes these means.

Accordingly, for at least these reasons, Applicant respectfully submits that claim 8 is clearly patentable over Nagano and Sauer.

Claims 9 and 10

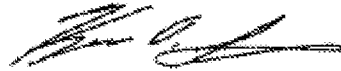
Claims 9 and 10 depend from claim 8 and are deemed patentable for at least the reasons set forth above with respect to claim 8.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 2-10 and 16-26 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

VOLENTINE & WHITT



By: _____

Kenneth D. Springer
Registration No. 39,843

VOLENTINE & WHITT
One Freedom Square
11951 Freedom Drive, Suite 1260
Reston, Virginia 20190
Telephone No.: (571) 283.0724
Facsimile No.: (571) 283.0740